



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

APPLICATION GRANTED
SO ORDERED *New York*
VERNON S. BRODERICK
U.S.D.J.

Dated: March 7, 2024

BY ECF

The Honorable Vernon S. Broderick
United States District Judge
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Riverkeeper, Inc. v. Regan*, No. 17 Civ. 4916 (VSB)

Dear Judge Broderick:

On behalf of defendants U.S. Environmental Protection Agency (“EPA”) and Michael Regan, in his official capacity as Administrator of the EPA (jointly, “defendants”) and with the consent of all parties, I write to provide the Court a status update as provided in the Court’s endorsed order dated September 27, 2023 [ECF No. 198].

On September 26, 2023, intervenor-defendant New York State Department of Environmental Conservation (“NYSDEC”) promulgated the first rulemaking described in the parties’ last status report [ECF No. 197]. This rule, which became effective on October 18, 2023, amends water quality standard regulations for four classes of saline waters, including revisions regarding enterococci criteria relevant to this litigation. The last status report also indicated that NYSDEC would undertake a second rulemaking to reclassify specific saline waters at issue in this litigation into different classes governed by the amended water quality standard regulations. However, upon further analysis, the parties now believe it would be more appropriate to undertake separate reclassification rulemakings for different groups of the affected waterbodies rather than one such rulemaking for all of the affected waters. Accordingly, NYSDEC is developing those rulemakings. NYSDEC anticipates filing the Notice of Proposed Rule Making associated with the first of those rulemakings with the New York State Department of State by March 31, 2025.

On February 29, 2024, plaintiffs’ counsel sent counsel for defendants and intervenor-defendants a letter providing substantive comments on NYSDEC’s rulemaking process and requesting various actions and commitments from the defendants and intervenor-defendants that may inform changes to that rulemaking process. Defendants and intervenor-defendants intend to respond to plaintiffs’ letter after appropriate internal consultations, which may be considerable. Accordingly, defendants respectfully request that the Court continue to hold in abeyance any action on the parties’ pending cross-motions for summary judgment and NYSDEC’s motion to amend its answer to assert a cross-claim against EPA [ECF Nos. 128, 150, 145, 154, 173] for 90 days, until **June 10, 2024**. Defendants further propose that the parties submit a joint status letter to the Court on or before **June 5, 2024**. Defendants further propose that any party may file a letter with this Court to terminate the abeyance period prior to June 5, 2024, but must first notify the

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March 6, 2024

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remaining parties at least two weeks prior to filing its letter, with the parties to engage in a meet and confer as soon as reasonably practicable. This is the defendants' eighth request on consent for the Court to hold these motions in abeyance. Plaintiffs and intervenor-defendants NYSDEC and the City of New York consent to this request.

We thank the Court for its consideration of this request.

Respectfully,

DAMIAN WILLIAMS
United States Attorney

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cc (via ECF): All counsel of record